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THE TRUTH, THE HALF-TRUTH, AND NOTHING LIKE THE TRUTH Reconceptualizing False Allegations of Rape

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Abstract

There is a longstanding dispute between criminal justice professionals on the one hand and researchers and commentators on the other regarding the prevalence of false allegations of rape. Prevalence, however, is contingent upon definition. If the various protagonists' definitions of a 'false allegation' do not coincide, it is virtually inevitable that their estimates will diverge. Drawing on original empirical data from in-depth research interviews conducted with police and Crown Prosecutors, this article explores the following important but much neglected question: When criminal justice professionals tell us that false allegations of rape are common, what precisely are they talking about? What 'counts' as a false allegation?

Introduction

The prevalence of false allegations of rape is a contested and controversial issue. On the one hand, mainstream socio-legal rape research and commentary claims that false allegations of rape are rare, or at least no more prolific than false allegations of other crimes. On the other hand, front-line criminal justice professionals reportedly tell us that false allegations of rape are a common occurrence. The disparity between these rival estimates is clear and well documented (Gregory and Lees 1996; Harris and Grace 1999; Lees 2002; Temkin 2002; Kelly et al 2005; Rumney 2006; Brown et al 2007; Kelly 2010). It is also characterized by remarkable longevity. Apparently unconvinced by three decades of research findings indicating the low prevalence of false allegations of rape, criminal justice professionals are sticking to their guns. In one recent UK study, for example, while researchers estimated that 3 per cent of a sample of police-recorded rape cases contained 'probable or possible' false allegations, police officers maintained that 'a good half', 'a lot' and even 'most' rape cases are false (Kelly et al 2005: 50-1).

It seems almost incredible that trained professionals at the criminal justice coalface—the police and prosecutors who deal with rape cases on a daily basis—should get it so very wrong, and for so long. Nevertheless, it is widely accepted that false allegations of rape are not as common as front-line criminal justice professionals perceive or report them to be. Dismissed as inflated and exaggerated, professionals' estimates of the prevalence of false allegations are presented by researchers and commentators as further evidence of the scepticism and stereotypical attitudes endemic to the criminal [1153] justice system, and society at large, which adversely affect the treatment of rape complainants and the investigation and prosecution of their complaints (Gregory and Lees 1999; Temkin and Krahé 2008). Beyond academe, senior criminal justice figures and policy makers also frequently and publicly castigate police officers and prosecutors for the sceptical attitudes towards rape complainants, failure to take rape allegations seriously, and inertia and mediocrity in the investigation and prosecution of rape cases.¹ In this battle of perceptions, academic voices undoubtedly prevail.

¹ See, eg V Baird, 'You've Been Raped: Why Bother Reporting It?', *The Guardian*, 10 April 2002; J Yates, 'We Need to Do More for Rape Victims', *New Statesmen*, May 2007; 'Top Officer Admits Police Scepticism is

Examining the available research, however, quickly reveals that the prevalence of false allegations of rape is far from empirically settled (see also Rumney 2006; Ministry of Justice 2010; Home Office 2010). As recent incisive reviews have highlighted, false allegations have been found to represent 1.5 per cent of rape cases, 90 per cent of rape cases, and virtually every other figure in between (Rumney 2006; Lisak et al 2010). Explaining these vastly divergent research findings is relatively straightforward. Prevalence is contingent on what precisely is being counted, and who is doing the counting (Greer 1999; Turvey 2004; Rumney 2006; Lisak et al 2010). Although seldom, if ever, acknowledged in the literature or surrounding debate, this methodological explanation for striking variation among research findings also has implications for the disparity between researchers' and professionals' estimates. Put simply, if researchers' and professionals' definitions of the false allegation do not coincide, they will not be 'counting' the same things, and their estimates will differ as a result. It is curious, then, that, as quick as researchers and commentators are to report (and repudiate) the frequency with which criminal justice professionals claim to encounter false allegations of rape, the literature reveals little, if any, attempt to discern how those same professionals define the false allegation (Jordan's New Zealand-based research provides something of a rare exception; see Jordan 2001; 2004).

The current article begins to address this interpretive void by exploring front-line criminal justice professionals' understandings and working definitions, in their own words, of the false allegation. The analysis begins with a brief critical examination of the definition of the false allegation presently favoured by the academic mainstream. It then shifts towards a more naturalistic style of analysis, in the tradition of Cicourel (1964; 1973; 1995, first published 1968) and Hawkins (1992; 2002). Drawing on original data from research interviews conducted by the author with police and prosecutors, the definitions and meanings ascribed to the false allegation by respondents, both explicit and implicit in the characteristics and features emphasized in the cases discussed by respondents under the rubric of the false allegation, are explored. The insights gained here inform a more nuanced and context-sensitive understanding of the nature and scope of false allegations of rape. The analysis gives rise to two claims. First, criminal justice professionals and researchers and commentators do not subscribe to the same definition of the false allegation of rape. Second, there may, in practice, be more consensus regarding the (in)frequency with which complainants allege rape when, in fact, [1154] no rape occurred than is currently acknowledged in the research literature and associated debate. The implications of these, admittedly provisional, findings are considered in the article's closing sections.

Before the exposition can commence, however, it is necessary to first give an account of how the data presented here were generated and, in the process, highlight the key methodological and analytical limitations. The analysis draws on original qualitative data produced in the course of a separate empirical research project examining prosecution decision-making in male-on-male rape cases. That research, referred to throughout as 'the male rape study', relied primarily on the careful and detailed content analysis of a small sample of prosecution case files (n=17) combined with in-depth, semi-structured research interviews conducted with the rape specialist Crown Prosecutors (n=14) responsible for decision-making in the individual sample cases. The study was further informed by, inter alia, exploratory interviews conducted in the early stages of the research with five Crown Prosecutors in their capacity as Area Rape Coordinators; two of whom were subsequently interviewed in the course of the study-proper in their capacity as prosecuting lawyers in sample cases. Supplementary research interviews were also conducted with a small number of police personnel from a single county police force corresponding geographically with one of the three anonymized Crown Prosecution Service (CPS) Areas participating in the study. As was the case with Crown Prosecutors, police respondents were selected for interview either on the basis of their direct involvement in cases from the male rape sample (n=3) or by virtue of the respondent's role in the development and implementation of local reforms to operational practice in investigating and prosecuting rape (n=3).

Leading to "Shamefully Low" Rape Conviction Rate', *Daily Mail*, 4 March 2008; Ken McDonald's comments in D Leigh, 'Police and Prosecutors Failing Rape Victims', *The Guardian*, 15 January 2008; R Prince, 'Harriet Harman Launches Rape Review', *The Telegraph*, 22 September 2009; H Mulholland and N Watt, 'Brian Paddick: Police Approach to Rape Allegations Could Encourage Offenders', *The Guardian*, 2 March 2012; Cf N Hopkins, 'Enduring Myths about Rape Victims Lead to Acquittals, Says Chief Prosecutor', *The Guardian*, 30 January 2012.

It is important to emphasize that the male rape study did not set out to examine false allegations of rape, either quantitatively or qualitatively, and was not designed to that end. It is also worth noting that all of the male rape cases sampled were considered by respondents to have constituted genuine rape complaints. Nevertheless, the spectre of the false allegation loomed large during research interviews, with all six of the police respondents and 13 Crown Prosecutors spontaneously raising the issue of false allegations either in the abstract or via concrete examples. While respondents were invited to clarify and expand on their comments, no attempt was made by the author to access additional case files in order to verify respondents' *ex post facto* accounts. The data presented here are thus largely anecdotal and must be read with appropriate caution. In the absence of further research, any inferences drawn from them are necessarily tentative and provisional. Comprising the uniquely situated accounts of 23 front-line criminal justice professionals² with hands-on experience of investigating and prosecuting rape cases, these data nevertheless shed valuable new light on an under-explored facet of an otherwise extensively researched, and heavily criticized, area of criminal justice decision making.

[1155]

Defining the False Allegation: The 'Commonsense' Perspective

At first blush, the meaning of 'false allegation' is self-evident and unproblematic. A false allegation is an allegation which is false; the victimization alleged by a complainant did not, in fact, occur (Rumney 2006: 130; Lisak et al 2010: 1319). *Prima facie*, the definitional boundaries of 'false allegation' are similarly unambiguous. If the crux of the false allegation is that the alleged victimization did not, in fact, occur, then, as a matter of commonsense and logic, reported victimization that *did* in fact occur is *not* a false allegation, but a true or genuine one. Perhaps unsurprisingly, this basic, 'commonsense' definition of the false allegation is not disputed in the research literature. Where definitions *do* differ is in relation to the means by which researchers determine—the criteria they adopt or the evidence they require in order to be satisfied—that an allegation may be *coded* as false. Unfortunately, it is not uncommon for such criteria to be omitted from research reports with the result that what constitutes a false allegation for the purposes of a particular study is often implicit, if not altogether unclear. What *is* clear, however, is that different studies utilize different coding criteria—or definitions—and produce different prevalence rates as a result (cf Cicourel 1964).

The inevitable variation among research findings leaves claims regarding the (in)frequency of false allegations on shaky empirical ground. A number of commentators have therefore sought to distinguish between more and less robust studies (cf Rumney 2006; Kelly 2010; Lisak et al 2010). Generally, this is done on the basis of whether a study's criteria for determining whether individual allegations may be categorized as false fall within what Lisak et al (2010: 1319) refer to as 'the parameters of accepted definitions', which they summarize as follows: 'To classify a case as a false allegation, a thorough investigation must yield evidence that a crime did not occur.' Notably, those studies that define the false rape allegation along these lines tend to produce lower estimates. And, with reported prevalence rates ranging from 2 to 11 per cent, they tend to do so (fairly) consistently (see eg Harris and Grace 1999; Kelly et al 2005; Feist et al 2007), prompting Lonsway (2010: 1358) to conclude '[a]t this point, there is simply no way to claim that the "statistics are all over the map." The statistics are now in a very small corner of the map'. However, these purportedly more rigorous and credible studies (Lisak et al 2010; Kelly 2010) do not systematically investigate and comprehensively measure false allegations of rape. Rather, at least in relation to the relevant UK studies, they subject one element of police crime recording practice to external scrutiny through *ex post facto* evaluation of certain 'no-criming' decisions in rape cases.

² Reflecting the sensitive nature of the original male rape study, and statutory guarantees of lifelong anonymity for rape complainants, anonymization here goes beyond that required by ethical good practice and data protection in social research. Police respondents are designated Police A through Police F, while Crown Prosecutors are designated Prosecutor A through Prosecutor Q. no information regarding individual respondents' gender, ethnicity and so forth or rank/position in their respective organizational hierarchies is provided. Where necessary, all police are designated male in the narrative, while all prosecutors are designated female. In reality, two police respondents were female and two of the prosecutors were male. In terms of ethnicity, all but three respondents were white British. The three BME respondents were all Crown Prosecutors.

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Since the introduction of the National Crime Recording Standard in 2002, the rules governing the recording of notifiable offences, including rape, are contained in the Home Office Counting Rules for Recorded Crime (currently Home Office 2012). In addition to detailing when police may record notifiable offences, the counting rules deal with the circumstances in which an offence that has been recorded (i.e., 'crimed') in error can subsequently be removed from the official crime statistics (i.e., 'no-crimed'). At present, the 'no-criming' rules are set out in section C of the General Rules and provide that a recorded crime should be classified as a 'no-crime' if any one of six criteria is met. The criterion typically associated with false rape allegations is contained in section C(B) and covers the situation '[w]here following the report of an incident which has subsequently been recorded as a crime, additional verifiable information is available which determines that no notifiable crime has been committed'. This, like its [1156] various predecessors, is *not* an official definition of the false allegation of rape. Rather, it is an administrative rule detailing one of the six limited circumstances in which a previously recorded crime—namely any notifiable offence, not just rape—can be wiped from the official tally. In other words, institutional counting protocols do not tell us what a false allegation *is*; they tell us when one can be 'no-crimed'.

Analysing how often recorded rapes have been correctly 'no-crimed' is, of course, an important and informative research endeavour and, moreover, one that sheds *some* light on the prevalence of false allegations. Nevertheless, tallying up 'no-crimes' is an inadequate method for establishing how often false allegations of rape are reported to the police. False allegations that did not satisfy the strict criterion for 'no-criming' and faltered in their criminal justice tracks for other reasons—for example, on the basis of insufficient evidence to support a prosecution—are not included in these counts. Neither are false allegations which were not identified as such by investigators and, for example, simply went undetected or, more worryingly, perhaps even proceeded to trial. If we factor in those false allegations that were not crimed by police in the first place (meaning there was nothing to subsequently 'no-crime'), it becomes clear that prevalence rates based on 'no-criming' decisions will be inaccurate. Although clearly conducive to reliable (i.e., consistent) measurement, operational definitions of the false allegation based on 'no-criming' rules exclude much from the count and are less conducive to valid (i.e., accurate) measurement as a result (cf Cicourel 1964; 1995; Phillipson 1972).

Moreover, definitions based on technical 'no-criming' rules do not reflect 'commonsense' or lay understandings of the false allegation. It is extremely doubtful, for example, that, if stopped in the street and asked to define the false allegation of rape, the average Joe would reply, 'It is an allegation of criminal victimization falling within the legal definition of rape which was initially recorded as a crime by police but later "no-crimed" in accordance with Home Office Counting Rules'. The lack of correspondence between the false allegation as it is increasingly defined and observed by researchers and the phenomenon as it is more commonly understood has implications for the conclusions and inferences that may reasonably be drawn from research. Citing evidence of low levels of 'no-criming' in rape cases, for example, in order to contradict criminal justice professionals' higher estimates of the prevalence of false allegations is meaningless unless professionals subscribe to the same esoteric, 'no-crime'-based, definition of the false allegation.

Although not explicitly tested or explored in the research, the assumption that there is (or ought to be) such definitional agreement among the relevant groups is implicit in the mainstream critique. This assumption, in turn, presupposes that there is a shared understanding of what a false allegation actually is. That is to say, it is assumed that researchers and criminal justice professionals all agree that (1) the essence of the false allegation is reported victimization which did not, in fact, occur; and (2) an allegation may only be *described*—as opposed to being officially 'no-crimed'—as false when 'verifiable information' demonstrates that no crime occurred. Neither of these assumptions is borne out by the data presented here.

Reconceptualizing the False Allegation: An Alternate Perspective

However appealing or commonsensical conceptualizing the false allegation as reported victimization that did not, in fact, occur might appear to be in the abstract, it does [1157] not reflect how police and prosecutors discussed false allegations during research interviews. Although sufficient, it certainly was not necessary that no crime had, in fact, occurred for an allegation to be described as false by

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respondents. Where a complainant's account of a (potentially) genuine rape was not (entirely) true, the allegation was also likely to be referred to as false:

There are clearly instances when the victim reports being raped and it is clearly just *complete* fabrication—they're quite rare, I must say—the alleged offender was on holiday in Benidorm at the time, you know? And then you get others, and these are the more regular ones, where they give an account and the basis of it—they give us a version that they've been in town and all that; they've had a bit to drink; and then they went to so and so pub; got talking to a chap and then he led them off down this alleyway and so on. Make enquiries and there's CCTV, or whatever, shows that *didn't* happen. She left with two other female friends and they got in a taxi. Then you do some more work—enquiries—and then suddenly it's, 'Oh yeah. We got a taxi.' And then she saw a lad that she knows and asked to stop and she got out and they went off and, 'It was actually him that raped me.' ... You will get others that aren't as clear cut as that, in a sense, where they give an account and then it gets challenged; the alleged offender says, 'No. That didn't happen. This is what happened.' And then you go back [to the complainant] and say, 'Well, the offender's actually saying this.' And they say, 'Yeah. Yeah, that's right actually. Sorry.' (Police A)

This more complex and nuanced conceptualization of the truth or falsity of an allegation was consistent across all police and prosecutors who discussed false allegations during the research interviews:

Either it's a malicious complaint, of which there have been a few, or, not necessarily a malicious complaint, but it's transpired that the complainant hasn't been entirely straightforward in the account they've relayed. (Police E)

There are cases where there have been false allegations and other cases where the account—you can show that the account's not actually the truth. (Prosecutor B)

These comments suggest that, at least for those criminal justice professionals interviewed here, a false allegation is not simply an allegation that is false, but *an allegation that contains falsehoods*. Of course, the alleged rape that did not, in fact, occur falls squarely within this definition of the false allegation. So, too, however, does the alleged rape that *did*, in fact, occur but the complainant's account of which contains some statement or statements of fact that are untrue. From this perspective, then, the 'false allegation' can be seen to incorporate two discrete phenomena, both of which are explored in detail below. To assist the reader in differentiating between these two manifestations of the false allegation, and reflecting their distinctive features, these phenomena are referred to separately in the analysis as (1) the *false complaint* and (2) the *false account*.

The False Complaint

The clearest example of the false complaint is an allegation that is fabricated in its entirety. A case discussed by Police A provides a useful exemplar. A university undergraduate reported to police that she had been raped by an unknown male while out with friends one evening. As the investigations got underway, her account of the evening's [1158] events was quickly contradicted by independent evidence, including witness statements and CCTV footage, which demonstrated unequivocally that: (1) the complainant was not where she had said she was prior to, during, and after the alleged rape; and (2) the complainant was not with the people she had claimed to be with prior to, during, and after the alleged rape:

[We] investigated and it certainly, *certainly*, could not have been how she initially reported it. Obviously, we had to go back [to the complainant] and revisit [her statement] ... The bottom line is that she withdrew her complaint saying, 'I can't cope with university life. I want to go home but I didn't know how I could tell my parents ... I didn't know what else to do.' (Police A)

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While this case involved an allegation in which every detail was fabricated—the complainant had, quite literally, ‘made the whole thing up’—the false complaint also covers those allegations where the events and circumstances described by a complainant have some factual basis but the non-consensual sexual activity at the heart of the allegation did not, in fact, occur, either because there was no sexual activity or because sexual activity was consensual. An example from Police E is illustrative.

This case, again, involved a female complainant who alleged that she had been raped by a stranger while on a night out with friends. She reported that she had somehow become separated from the group in a local nightclub. As she looked for her friends, she was grabbed by an unknown male, dragged into nearby toilets and raped. Once again, the complainant’s account was quickly contradicted:

The first thing they [CID] do, obviously, is go to [the nightclub] and check the CCTV. Upstairs part of [the nightclub] is shut off—it’s roped off—and CCTV shows her and this man climb over this rope together, go upstairs, and disappear off into one of the toilets. About twenty minutes later, they come out. You can see her straightening her clothing—I think she gives him a peck on the cheek—and then they exchange telephone numbers before going away. (Police E)

Clearly, video evidence that the complainant had, apparently of her own steam and volition, accompanied the accused to the toilet and so forth does not establish that any sexual activity was consensual. It does, however, mean that her account of events—contained in a sworn witness statement and thus the basis of her anticipated testimony at any subsequent trial—was not consistent with other available evidence.

Criminal justice professionals recognize that witnesses’ memories are not infallible and that evidential discrepancies are neither unusual nor necessarily an indication of intentional deceit on the part of a witness:

That happens a lot ... it might not happen deliberately. It might be that, because they’re drunk, there’s been a gap in their recollection or they’ve not quite remembered something correctly. (Police E)

Inconsistencies and contradictions may also be an artefact of police interviewing techniques, with evidential discrepancies unwittingly introduced in the statement-taking process (Shepherd and Milne 2006). They may, however, be the result of a witness’s deliberately false or ambiguous statements of fact. Where discrepancies are apparent, prosecutors will generally advise police to re-interview a witness, if they have not already done so, in order to explore and explain, if not resolve, evidential contradictions or inconsistencies. Alternatively, evidential discrepancies may be explored by the prosecutor directly via a pre-trial witness interview with the complainant (Roberts and Saunders 2008; Crown Prosecution Service 2008). This, in Prosecutor L’s words, ‘give[s] 1159 a victim the opportunity to say, “Actually, that bit’s not quite right. This is the truth”’. Identifying and rectifying, so far as possible, evidential discrepancies in the prosecution’s case pre-trial reduces the defendant’s ability to exploit them subsequently and, in so doing, may improve the chances of the case progressing and leading to conviction (Roberts and Saunders 2010).

In the instant case, however, re-interviewing the complainant brought the investigation to an abrupt end. Confronted with what the police considered to be, at the very least, a misleading account of the circumstances surrounding the alleged rape, the complainant admitted that all sexual activity with the accused was, in fact, consensual. In contrast to Police A’s example above, this complaint had *some* foundation in truth: the complainant was where she claimed to be; was with the group of friends she had claimed to be with; and sexual activity with the accused had, in fact, occurred. But, by her own admission, she had not been raped. According to Police E, the complainant now retracted her complaint with the following explanation:

Her boyfriend’s been calling her: ‘Where are you? What’s been happening? Why are you so late in?’—and this is what she’s come out with. And suddenly, she’s found herself trapped.

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Trapped in a lie that's suddenly exploded all over, and the only thing that she can think to do is continue with it.

False complaints may arise for a variety of reasons. Examples commonly mentioned by respondents during research interviews included: a complainant's attempts to conceal or deny discovered infidelity; minors concealing consensual under-age sexual activity; consensual sexual activity that is subsequently regretted; and historic complaints following the breakdown of a relationship (see also Turvey 2004; Kelly et al 2005). Three respondents also gave examples of false complaints where the motive appeared to be an attempt to manipulate, or provoke the sympathies of, local authorities:

Looking through the Social Services records, she'd made a lot of allegations, not to the police but to the local authority. So every time she wanted to move, it looked as if she'd gone to the local authority and said, 'I've been raped in this flat. My memories in this flat are just too painful. I need to be moved.' And she'd realized that, because they took rape so seriously, they would act on that. Whereas if she'd just said, 'I don't like living here anymore, it's too noisy,' they wouldn't. (Prosecutor K)

The terminology of the 'false' complaint is therefore preferred here over the more commonplace 'malicious' complaint, as the former makes no allusions, accurate or otherwise, to the circumstantial motivations behind an allegation, while the latter implies some malevolent intent on the part of a complainant. Undoubtedly, some false complaints will be made maliciously: 'It's a very occurrence... but there are people who are utterly determined to ruin lives' (Prosecutor C). Others, however, will arise for non-malevolent reasons (see also Rumney 2006: 130-1):

They may have very good reasons for making the allegation—I mean there's never a *good* reason for making a false allegation—but because of their circumstances, they may make these allegations ... Some complainants are particularly vulnerable; the ones that have been in care or have been with foster parents. They are vulnerable sometimes. (Prosecutor B)

Usually something has happened, or there is some form of a problem, and this is that person's way of trying to wave a flag to alert somebody. It's not the best means of doing it but sometimes it's the only means of doing it. (Police A)

[1160] Furthermore, it may be impossible to identify with any precision the motivation behind a false complaint as Police D's comments below indicate. A multitude of situational factors and complainant vulnerabilities might, either singly or in combination, explain why this particular complainant had made a series of false complaints against her estranged partner:

It's a family of eight children by three different dads. Mum's not very intelligent. A drinker. Basically has children to get an income. It's a tatty council house. Too many dogs. Previous [convictions]. Not allowed to have animals because of neglect. One child's been adopted because of neglect. Then she's split with her partner and there is allegation after allegation. She's made allegations of domestic violence ... allegations of rape [involving her own victimization, and two of her daughters] ... When [investigators] speak to the children, they say it's all made up because they want a house move ... He gets arrested for it; interviewed for it. He says: 'It's absolute cock and bull. We're going through a custody battle. She doesn't want me to have my children.'

Police D's brief discussion of another false complaint, this time of anal rape allegedly perpetrated against a physically and mentally impaired 12-year-old male, further complicates matters. Here, it was the alleged victim's mother who reported the offence to police, indicating that it is not only complainants themselves who may be motivated to make a false complaint:

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But she's *lying!* *Blatantly* lying! ... Then you talk to Social Services who said, 'Actually, we're just about to stop mum's allowances because her boy is not disabled enough to get carer's allowance.' And then all of a sudden we've had this complaint. And that's a worry—that she would put her child through being video interviewed, and potentially a forensic medical examination, because she's upset with Social Services for stopping her carer's allowance.

While situational factors and complainant characteristics may provide an *ex post facto* explanation as to why such an allegation was made, for police and prosecutors, the crux of the false complaint is simply that the alleged rape did not happen. Why the complainant—or, indeed, a third party—said it *did* is neither here nor there for the purposes of launching criminal proceedings.

The False Account

Unlike the false complaint, a false account of rape does not equate to establishing—or suspecting—that no rape, in fact, occurred. Rather, this is an allegation of rape containing statements of fact that are inaccurate and, consequently, *not* true. Not every factual inaccuracy or ambiguity, however, will lead to a complainant's account being regarded as false. Some degree of factual inaccuracy and inconsistency with other evidence is considered by police and prosecutors to be par for the course. Indeed, evidential discrepancies are such a regular and anticipated feature of criminal investigations and prosecutions that it may be their *absence* rather than their presence that triggers concern:

As an investigator, I would say that everything matters and the devil's in the detail with everything. But that said, I'd be a bit dubious if everything between the IP [injured party] and all the witnesses was exactly 100 per cent the same account because people don't remember things the same. Between me and you watching the same event, you don't get the same recollection and it [1161] wouldn't be committed to paper in exactly the same fashion. So you're expecting little bits that aren't quite right. (Police E)

What appears to prevent 'little bits that aren't quite right' being regarded as falsehoods is the absence of any wilful deception on the witness's part, rather than the peripheral or incidental relationship between any factual inaccuracy and the material issues in a case.

In Case 6 from the male rape study, for example, the complainant reported that he had been raped by a known accused the previous day. In fact, the alleged rape had taken place almost a week earlier. At the time of his disclosure, the complainant was intoxicated, visibly injured and clearly distressed, having just been physically assaulted by the same accused. The prosecutor discussed the factual errors contained in the complainant's statements in terms of his being confused rather than the account being false:

He says he's been raped the previous day. Now that is obviously inconsistent with what he later says in terms of the date of the offending but he's been assaulted, he's potentially confused, and I think the significance of it really is that he's making the accusation of rape—albeit that he's saying it happened the day before. (Prosecutor D)

Similarly, in Case 4, various elements of the complainant's accounts were discovered by investigators to be inaccurate. Although sober when he gave his witness statement, the complainant had been heavily intoxicated at the material time. Again, the prosecutor attributed the complainant's multiple factual inaccuracies to impaired recall rather than deliberate falsification: 'He just couldn't remember. That's it. It's not that he lacked credibility. He just couldn't remember how he'd got, where he'd got, and what was happening' (Prosecutor C).

While complainants' unwitting mistakes were not generally described as falsehoods, respondents consistently brought wilful deception within the umbrella of the false allegation. This suggests that the essential characteristic of the false account is a complainant's apparently conscious and deliberate concealment, distortion or alteration of the facts rather than factual inaccuracy in and of itself. In striking contrast to the false complaint, a complainant's intentions and motivations, or

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perceived intentions and motivations, thus appear to play a pivotal role in an account being regarded as false. This claim is further reinforced by observing that it was not necessary for an account to contain expressly stated untruths or inaccuracies for it to be described by respondents as false. In other words, complainants may be deemed to have lied by omission.

This is a contentious issue in the existing research literature. As Kelly (2010: 1350) observes, '[p]revious research has highlighted that rape victims may withhold information they think may lead to them being disbelieved or blamed, but this is interpreted by the police as "lying"'. While we might readily understand why a complainant might choose to be selective during disclosure—for example, by failing to mention to police that illegal drugs were consumed prior to an alleged rape or omitting details of any previous flirtation or consensual sexual activity with the accused—it is difficult to see how deliberately withholding information from investigators, prosecutors, and potentially the courts might reasonably be interpreted other than as deceit. To distinguish between express and implied deception is to draw a bright-line distinction where, in practice, there may be none. Certainly, to the extent that omissions can result in a [1162] positively misleading account of events and circumstances, they may have much the same effect as expressly stated falsehoods. This point is illustrated by a further case from the male rape study.

In Case 7, the complainant reported that he had been raped by a stranger in a 24-hour sauna. In giving his account to the police, the complainant explained that, having spent the evening out in town with his boyfriend, he had missed the last train home and had insufficient funds for either a taxi or a hotel room. Drunk, tired and stuck in the city centre until morning, the complainant decided to enter the sauna in order to sleep there. He stated that, having visited the same establishment on previous occasions, he was aware that it was used by homosexual men for casual sexual encounters, but he reiterated that the sole purpose of his visit that night was to get some sleep. The complainant then alleged that he had been anally penetrated as he slept naked on the floor of an unlocked private cubicle.

The defendant was arrested at the scene. When interviewed by police, the defendant claimed that the complainant had invited him into the cubicle where they engaged in consensual sexual activity. The complainant then noticed that the defendant was wearing glasses and asked why he had not been wearing them earlier. At this point, according to the defendant, the complainant's behaviour became 'weird'. Believing the complainant to have mistaken him for someone else, the defendant immediately ceased all sexual activity and withdrew from the cubicle. Re-interviewed by investigators, the complainant disclosed that he had had an intimate encounter with an unknown male in the same cubicle shortly before the alleged rape—a previously omitted factual detail that not only tended to undermine the complainant's account of why he was at the sauna, but also lent some support to the defendant's version of events. Asked directly whether the complainant's account was merely incomplete as opposed to false, Prosecutor E replied: 'Incomplete in so far as he didn't mention it initially, which would give a false impression, maybe, as to what's been going on that evening.'

Be they express or implied, respondents reported that falsehoods range from seemingly inconsequential or innocuous details to elaborate and significantly more calculated narratives. Complainants, for example, may understate:

She said she'd only had one or two vodkas and she was about eight times over the drink drive limit. (Prosecutor C)

or overstate the amount of alcohol consumed at the material time:

One that I've got on my desk at the moment is an absolute—I'm not going to be able to run with that at all because we've got evidence that completely counters: From eye-witnesses who've seen the complainant functioning perfectly normally immediately before and after the incident and she complains she's got no recollection of the incident, until she came to with somebody having sex with her; CCTV footage of her walking off with him and coming back with him; all sorts of crucially undermining material. (Prosecutor J)

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Similarly, a complainant may categorically deny, or fail at all to mention, any voluntary consumption of intoxicants, particularly unlawful drug use, when making a statement only for their (explicit or implicit) assertions of sobriety to be contradicted later by independent evidence.

Morally unimpeachable but implausible accounts of how complainants came to be at the scene of an alleged rape were reported to be a recurring issue in complainants' [1163] witness statements. As an example, Prosecutor M referred to an ongoing case involving a female complainant who alleged that she had been raped by two males she encountered in the street while out one evening for a walk. Although confident that the complainant had, in fact, been raped, the prosecutor found the complainant's account of how she came to be outside a notorious local crack-house—the scene of the alleged rape—in the early hours of a wintry morning incredible:

She's a Bangladeshi lady. She's in her mid-thirties. She's got two children. She's got a drug problem [and a documented history of prostitution]. She walks out of the house at midnight, says, 'I'm going for a walk.' Now, what a *load* of rubbish! She was going out on the pull in return for her drugs ... She hasn't gone out for a walk. *Walk?* ... *What?* Do they think that we were born yesterday?

Scepticism regarding complainants' sudden urges for 'a breath of fresh air' or to 'take the dog for a walk' in disreputable areas at unsociable hours was not confined to female complainants. Respondents reported that male complainants were also prone to provide unlikely explanations for their presence at the alleged scene, particularly where the location was known to be used by homosexual men for anonymous sexual encounters:

Some men, they are perhaps not always *strictly* honest with the police in terms of how they came to be where they were, and the reasons why they were at that particular location, which can have the impact of undermining their credibility. That has been a big problem. (Prosecutor D)

It is worth noting that it was not only rape complainants who were reported to provide improbable, if not wholly implausible, accounts of how they came to be at a particular location, at a particular time and with a particular individual. In short, scepticism regarding victims' accounts is not unique to rape:

We have it a lot with men who get robbed by prostitutes and their pimps. And they say, 'I was on my way to church and this girl who was wearing a very short skirt and no bra asked me if I would help her carry her library books,' or something, you know! (Prosecutor D)

Alternatively, complainants may falsely describe their presence at the alleged scene as involuntary—typically, as the result of having been dragged or led off by an accused. A further variation involves complainants giving a false account of the scene itself, which has obvious investigative and forensic ramifications. Scenes of crime officers, for example, will not detect and collect relevant evidence if directed to the wrong location. Equally problematic in terms of detection and prosecution, respondents reported that the accused's identity may also be deliberately misreported by complainants:

We do get, on occasions, where they say that they were raped by an unknown person down a back alley as they're walking along. Whereas, in actual fact, they were taken back to somebody's flat—a *known* person's flat—where [they engaged in] consensual [sexual activity] and it got out of hand. And they want to report they've been raped, but they don't actually name him because he's a mate. Well, he *was*. But when it comes out, they've *blown* it really. (Police A)

A final variant of the false account involves complainants' non-disclosure—and, sometimes, vehement denials—of particular sexual acts. For example, Police D discussed a case involving a 16-year-old female who, during a series of video interviews with police, disclosed historic and continuing abuse at the hands of her guardians amounting to serious sexual assault. She did not, however, make any

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allegations of [1164] rape. The true nature and extent of her victimization was subsequently revealed by independent evidence, including photographic evidence seized by police and the defendants' confessions:

I arrested uncle and aunt, recovered the photos—he'd kept them as trophies beside his bed—and he fully admitted everything and admitted raping her, which she hadn't told me. ... And this really threw—you just can't believe that this old boy's admitting it all to me. ... I had to go back to the teenager again and say, 'Look. I don't think you told me everything. I can't tell you what he's telling me'—because he was still locked up—'but has anything else happened?' And she just broke down and said, 'I didn't think you'd believe me.' (Police D)

Non-disclosure was similarly raised by Prosecutor M in a case involving the alleged oral rape of a 14-year-old female. Here, independent evidence was available which suggested that vaginal penetration may also have occurred. Although astute to the reasons why she may find it difficult to disclose all the intimate details of her victimization to investigators, Prosecutor M highlighted the possible implications of the complainant's (suspected to be) less-than-full account for any subsequent trial:

She's so traumatized. It takes them two hours on the ABE³ video [recorded witness interview] to get about five or six sentences out of her ... But, mark my words, it will all be played upon by the defence to create so much doubt that you can only but find this guy not guilty.

Distinguishing between False Complaints and False Accounts

Conceptualizing the false complaint and the false account as discrete phenomena is straightforward and illuminating in the abstract. To the extent that the false complaint/account dichotomy enables us to avoid being distracted here by questions concerning how false an allegation is and to focus, instead, on what it is about an allegation that leads criminal justice professionals to describe it as false in the first place, it is a useful analytical construct. In practice, however, the boundaries between the false complaint and the false account are not clear-cut.

Faced with independent evidence demonstrating that a complainant's statement contains assertions of fact that are incontrovertibly false, investigators and prosecutors may be hard-pushed to determine with any certainty whether the allegation that does not stack up evidentially is a false complaint or a false account of a genuine rape. To be sure, as the recent furore over the rape complainant jailed in Wales for perverting the course of justice after falsely retracting genuine allegations of rape reveals, even an admission of fabrication by the complainant does not mean there was, in fact, no rape.⁴ Moreover, there may come a point at which the complainant's falsehoods are so substantial that it is appropriate to refer to the report as a false complaint even though a genuine rape [1165] incident lies behind the allegation—a point which is powerfully demonstrated by a case discussed at some length by Prosecutor B during our research interview.

Accompanied by her mother, a female complainant reported to police that she had been raped by a stranger just a few hours earlier:

³ A video-recorded witness statement which may be admissible as the witness's evidence-in-chief pursuant to the Achieving Best Evidence policy initiative (cf Home Office 1998; Ministry of Justice 2011). Section 27 of the Youth Justice and Criminal Evidence 1999 governs the admissibility of video-recorded interviews with eligible witnesses.

⁴ A Topping and H Pidd, 'Woman Jailed for Retracting Rape Claims is Refused Appeal', The Guardian, 17 November 2010; A Hill, 'False Retraction of Rape Claim Case to go to Supreme Court', The Guardian, 16 March 2012. The case triggered calls for reform in the prosecution of rape complainants for offences against the administration of justice. The resulting CPS guidance is available online at www.cps.gov.uk/legal/p_to_r/perverting_the_course_of_justice_-_rape_and_dv_allegations/ Last accessed 30 June 2012.

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I think she was about 15 or 16; she was a young girl. She had done a video [recorded interview] where she described in detail how she was dragged into this flat and raped. She describes the flat and she describes the person that raped her and all the rest of it and, you know, fantastic. She *was*. She'd been out for the night and was supposed to be home by 11 [p.m.] and she hadn't returned. And her mother, between 11 and 1 o'clock when she came in the door, had phoned her 200 times on her mobile and couldn't get an answer. And the mother said—the mother's statement was amazing—her mother said, 'As soon as I opened the door, I knew something had happened to her. I *knew* that something had happened.' (Prosecutor B)

Although unable to identify her alleged assailant, the complainant's comprehensive and detailed descriptions of both him and the whereabouts and interior of his flat enabled investigators very quickly to identify and arrest a suspect. When interviewed by police, the accused repeatedly and categorically denied the allegations against him in their entirety. On the basis of what were perceived to be compelling witness statements from the complainant and her mother, and the initial report of the forensic medical examination that confirmed recent penetrative sexual activity, the accused was charged with rape and remanded into custody:

He said, 'No. It never happened. She's never been to my flat. I don't know her. I never raped her.' So, of course, he was charged because she *described* him, she described the inside of the flat in perfect detail. There was *nothing* to suggest that she wasn't telling the truth.' (Prosecutor B)

Some three weeks later, the police received the results from DNA tests conducted on semen recovered from the complainant's vagina during the forensic medical examination. The semen was not the accused's. Re-interviewed by police, the complainant now admitted to having lied in her previous statements. The rape alleged had not occurred. Indeed, she had never met the accused. Her descriptions were based on a visit to the accused's flat, in the accused's absence, with a friend who worked for him and had access to his home. She maintained, however, that she *had* been raped. A further video interview was conducted with the complainant, during which she disclosed what Prosecutor B (once again) considered to be a compelling account of a genuine rape, but one which was perpetrated in wholly different circumstances and by another accused:

They got the DNA results and it was somebody completely different. So they got her in again and she said, 'Actually, I was raped but it wasn't him. It was another boy. And he raped me in a car.' And she said, 'The reason I blamed this boy'—the man who's now in custody—'is because I'm scared of the second boy because he said, if I tell anyone, he'll kill me.' (Prosecutor B)

The second accused was arrested and interviewed by the police. He admitted to penetrative sexual activity with the complainant, at the time and in the circumstances as she had described them—albeit that he denied the presence of a knife and the absence of consent.

Whether this complainant's initial allegations are considered to constitute a false complaint or a false account is an issue on which reasonable minds might reasonably [1166] differ. The practical utility for criminal justice professionals of a broad, all-encompassing working definition of the 'false allegation' is thus thrown into sharp relief. By lumping everything together under the rubric of the false allegation, police and prosecutors avoid having to grapple with complex, nuanced and, for the purposes of criminal proceedings, largely irrelevant conceptual distinctions. If the false allegation is defined as an allegation containing falsehoods, the question to be asked in any given case is *not* simply whether there was, in fact, a rape, but whether, in the course of an investigation, the complainant told the truth—the *whole* truth and *nothing but* the truth. And, in Prosecutor B's case, the answer to that question is a resounding 'No'.

Viewed from this perspective, then, 'false allegation' can be seen as constituting what Cicourel (1995: 105) refers to as a 'police [and, here, also a prosecution] argot mixed with everyday language [which] enables the work unit to communicate within itself easily and with a minimum of debate.' At

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least for those criminal justice professionals interviewed here, describing an allegation as false does not necessarily mean there was, in fact, no rape. Indeed, it does not necessarily mean there was no prosecution:

It doesn't necessarily mean that you would immediately drop a case or decide not to prosecute. You'd have to look at all the circumstances surrounding it. (Prosecutor B)

It may be that [the complainant] could explain that. You know, it's not something like that that would necessarily mean that every case would get dropped. (Prosecutor E)

Instead, referring to an allegation as false quickly and effectively signals to other criminal justice actors that there is evidence of a complainant's mendacity which may undermine that witness's credibility and cast doubt over the accuracy and thus the reliability of his or her testimony should the case proceed to trial. It means, in short, that the complainant tells lies.

Taking Stock

On the face of it, criminal justice professionals' estimates of the prevalence of false allegations reported elsewhere were replicated here. The general consensus among those respondents who volunteered any estimate regarding prevalence was that false allegations are common in rape cases. Prosecutor G, for example, was particularly forceful on this point: 'I've had loads of them where they've just actually lied; out and out *lied*.' Superficial analyses, however, are inadequate. As we have seen, respondents utilize the term 'false allegation' in reference to both false complaints and false accounts. And, according to the police and prosecutors interviewed here, these phenomena occur with different frequencies. Respondents were virtually unanimous in reporting that *false complaints* are rare (see also Home Office 2010: 40):

It's a very rare occurrence. (Prosecutor C)

We don't tend to have many of those in the child abuse unit because they tend to be telling the truth. It is rare really. (Police D)

They're quite rare, I must say. (Police A)

We get very few cases that go through where it's a false allegation ... it's a tiny minority of cases. (Prosecutor Q)

[1167] False accounts, however, were said to be common:

[There is a problem] with inconsistent accounts and accounts that don't hold water ... Women—and men—aren't routinely making up allegations of rape. I'm sure it does happen, but it's not—that isn't why the conviction rates are so low, is it? But we do have all sorts of problems with the accounts that victims give. (Prosecutor J)

Often, you do read a case and you think, well, the defendant's not telling the truth, but then, neither is the complainant. (Prosecutor G)

It's usually this one; it's usually the false account—they don't tell you it all. It completely mucks up the case right from the start. (Prosecutor M)

The perception that false accounts were more prevalent in rape cases than in other offence categories was also expressed, albeit cautiously, by Prosecutor Q:

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I do think it's one area of the law where you do get more false accounts than perhaps in any other. You don't get many false accounts in theft, or handling stolen goods, or even assault really. It is one of those areas where, perhaps, the figures are slightly skewed, perhaps, by false accounts.

Though undoubtedly provisional in the absence of further research, this is an important finding—and not merely because it supports my earlier proposition that researchers' and professionals' disparate estimates of the prevalence of false allegations may be the artefacts of incompatible definitions. Respondents' more nuanced observations regarding the prevalence of false allegations suggest that researchers' and criminal justice professionals' conflicting estimates may not be entirely irreconcilable. There is, after all, something of an overlap between police and prosecutors' definitions of the false allegation reported here and its basic 'commonsense' meaning implicit in the research literature. Certainly, what I have referred to here as the 'false complaint' approximates to the 'false allegation' as it is tacitly understood—although not necessarily operationalized—by researchers and commentators. At least in terms of the (in)frequency with which complainants allege to have been raped when, in fact, they have not been, there may be more agreement among the various protagonists than the current discourse either acknowledges or allows.

How often allegations of rape contain falsehoods is an open question, in that the existing research neither contradicts nor supports respondents' claims regarding frequency. While a variety of definitions of the false allegation have been employed by researchers over the years, they tend not to coincide with police and prosecutors' own generic conceptualizations as outlined here. Indeed, false accounts are generally sidelined by researchers and commentators on the straightforward basis that a complainant's lies do not necessarily equate to no rape having occurred. As a result, vital questions concerning the prevalence of false accounts and their implications for bringing offenders to justice are overlooked and underexplored. As Police A observed:

From my knowledge, there doesn't appear to have been any work—research or whatever—to say, in actual fact, X per cent of all allegations of rape are not factually correct ... The Home Office, government, are saying, 'Oh, this is terrible. Only a 5% conviction rate.' And we're the bad guys. When it'd be nice to say, 'Well, just wait a minute. Whatever percentage gave—knowingly—a false account which seriously jeopardized the possibility of a conviction.'

[1168] The unfortunate consequence of what is perceived by professionals to be a glaring gap in the research is that the debate surrounding false allegations of rape may have reached something of an impasse. While criminal justice professionals' experience-based estimates and perceptions are quickly dismissed by scholars on the basis that they do not tally with (select) research findings, research and commentary are rejected with equal speed by front-line professionals on the basis that findings do not reflect the scope or nature of false allegations as they experience them (see further Lonsway 2010):

There is some researcher who decided that only 2% of all accounts were false ... Well, I must have had more than my fair share. (Prosecutor K)

I read these things [research reports and commentary] and think, they have no idea of how bad some of these cases are. They just don't stand up to even slight scrutiny. (Prosecutor E)

Summary and Conclusions

This article began with the proposition that the disparity between researchers' and criminal justice professionals' estimates of the prevalence of false allegations of rape may be explained by methodological as opposed to attitudinal factors. The aim of the analysis was to explore this claim by probing police and prosecutors' definitions and implicit interpretations of the false allegation. It is important to reiterate that much of the original data analysed here comprise spontaneous—but, nonetheless, apparently considered—observations and comments from a small number of rape specialist criminal justice professionals interviewed in the course of a study which was neither intended nor

designed to examine the nature and scope of false allegations. That said, the striking consensus among respondents' perceptions, observations, and illustrations of the false allegation gives cause for guarded optimism. So, too, does the general concurrence among respondents', admittedly imprecise, reports of their prevalence.

The analysis revealed that respondents' working definitions of the false allegation are not anchored in institutional counting protocols aimed at standardizing local crime-recording practices. In other words, 'false allegation' is not criminal justice shorthand for a notifiable offence recorded by police but later 'no-crime' in accordance with relevant counting rules. Nor do respondents' definitions mirror 'commonsense' understandings of the false allegation as a complete fabrication of something that never happened. Rather, reflecting the trial-focused priorities of criminal proceedings, the false allegation is defined as *an allegation containing falsehoods*: a generic, all-encompassing definition capable of incorporating both the rape that did not happen (the false complaint) and the rape that did not happen the way the complainant said it did (the false account).

Consequently, when criminal justice professionals tell researchers that, in their experience, false allegations of rape are common, they are unlikely to be providing an impromptu reckoning up of how often they 'no-crime' recorded rapes; nor, it seems, are they likely to be describing how often they encounter cases involving complainants [1169] who claim to have been raped when, in fact, they have not. What criminal justice professionals may instead be telling us is that it is not uncommon for complainants to make false statements to police when alleging rape. In short, when estimating the prevalence of false allegations of rape, researchers—particularly those producing the lowest and purportedly more 'robust' estimates—and criminal justice professionals appear to be 'counting' very different things. Moreover, respondents' more nuanced and discerning comments and insights regarding prevalence suggest that the disparity between researchers' and professionals' estimates may be more apparent than it is real. The police and prosecutors interviewed here reported that, in their experience, it is rare for a complainant to allege rape when, in fact, no rape occurred. *False accounts* of rape, however, were said to be common.

It is worth emphasizing that the broader argument here is *not* that criminal justice professionals' working definitions of the false allegation are inherently correct or superior to those found elsewhere, or that false allegations of rape are common because six police officers and 13 prosecutors said they are. Rather, the point is this: while researchers', commentators' and, indeed, readers' own personal politics and theoretical persuasions may lead them to prefer some (usually the lower) estimates of the prevalence of false allegations over others, there is currently no empirical justification for the wholesale dismissal of front-line criminal justice professionals' reports of their frequency. First, because, given the mixed bag research findings, the only thing we know with any certainty about the prevalence of false allegations of rape is that we do not know how prevalent they are. And, second, because there has been little, if any, attempt by researchers to date to ensure that they understand—or, if they *do* understand, to accurately reflect in their research reports—what their interview respondents perceive as constituting a false allegation. As the foregoing analysis has shown, there is thus a very real possibility that researchers, commentators and criminal justice professionals are talking at cross-purposes.

Although provisional, the findings reported here represent an important, if tentative, first step towards reinvigorating and reorienting the so-called debate surrounding false allegations. Despite 30+ years of being told that their perceptions are wrong, front-line criminal justice professionals have steadfastly maintained that false allegations are a common feature in rape cases. On closer inspection, however, it seems that the bulk of those false allegations may be false accounts—a phenomenon that can present formidable, and potentially insurmountable, hurdles to detection and prosecution, but one that is generally trivialized, where it is not wholly overlooked, by the research community. Insofar as the aim of critical rape research is to shape and inform criminal justice policy and practice, the persistent failure to engage with the false allegation as it is conceptualized and experienced by investigators and prosecutors is a curiously myopic and patently counter-productive approach. Owing to what is perceived by these front-line criminal justice professionals as its partial and empirically tenuous claims to knowledge, critical social research and commentary surrounding false allegations of rape lacks credibility with perhaps the very group would-be reformists seek most to influence and persuade.

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